

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GLOBAL TRANSPORTE OCEANICO, :
Plaintiff, :
-v- : 08 Civ. 6387 (DLC)
:
BRYGGEN SHIPPING AND TRADING A/S, : MEMORANDUM OPINION
Defendant. : AND ORDER
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DENISE COTE, District Judge:

Plaintiff Global Transporte Oceanico ("Global") filed this admiralty action on July 16, 2008, to obtain a Maritime Attachment under Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure. On the same day, such an attachment was authorized by the Court in the amount of \$874,728.95, the full amount requested by the plaintiff. According to the submissions of the parties, after the plaintiff successfully restrained \$189,448.37 of the defendant's assets, the defendant agreed to issue a letter of guarantee in the full amount of the Maritime Attachment.

Defendant Bryggen Shipping and Trading A/S ("Bryggen") filed an answer containing a counterclaim on July 31, 2008, seeking \$1,125,493.23 in damages from plaintiff. The counterclaim arises out of the same charter party that is the subject of plaintiff's claims. Bryggen now moves for

countersecurity pursuant to Supplemental Rule E(7) in the amount of \$1,125,493.23.

Rule E(7) provides:

When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court, for cause shown, directs otherwise.

As the Court of Appeals has stated, "the trial court possesses broad discretion in deciding whether to order countersecurity." Result Shipping Co. v. Ferruzi Trading USA Inc., 56 F.3d 394, 399 (2d Cir. 1995). The "two principles" that should guide the exercise of this discretion are (1) the purpose of Rule E(7), which is "to place the parties on an equality as regards security," and (2) the countervailing need not to "impose burdensome costs on a plaintiff that might prevent it from bringing suit." Id. at 399-400 (citation omitted).¹

In its responsive papers, plaintiff states that as a condition precedent to delivery of the vessel, it was required to make a cash deposit of \$500,000.00 to act as security for any

¹ It should also be noted that plaintiff, while challenging the defendant's damages estimate as "speculative," does not assert that defendant's counterclaim is frivolous. Result Shipping Co., 56 F.3d at 399.

future claims.² Global argues that it provided the cash deposit as part of an agreement that Bryggen would request no additional guarantee from Global, and that Bryggen is, therefore, entitled to no additional security in this matter. In the alternative, Global contends that Bryggen's damages estimate is unreliable and that Bryggen should be limited to countersecurity totaling \$874,728.95 -- the amount of security given by Bryggen to Global.³ Indeed, Global points out that the vessel is currently on charter to a third party. Bryggen opposes limiting its countersecurity to the security that Global requested and obtained, arguing that such an outcome would reward the plaintiff for winning a "race to the courthouse."

Having considered the submissions of the parties, the purposes of Rule E(7), and all relevant circumstances, it is hereby

ORDERED that defendant's request for countersecurity is granted in the amount of \$874,728.95, inclusive of the balance that is already being held by defendant in an interest bearing account.

² The parties report that the deposit was made in an interest bearing account, whose current balance is \$551,881.02 plus further interest accruing regularly.

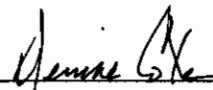
³ In its responsive papers, Global represents that, in an effort to avoid this motion practice, it offered to provide additional security to Bryggen, in excess of the amount already being held, up to a total of \$874,728.95. Global's offer was refused.

IT IS FURTHER ORDERED that if plaintiff fails to provide such security within ten business days of this Order, the July 16, 2008, attachment issued in this matter will be vacated.

IT IS FURTHER ORDERED that the parties shall provide a status letter to the Court no later than **November 7, 2008**, unless a stipulation of dismissal is submitted before that date.

SO ORDERED:

Dated: New York, New York
October 22, 2008



DENISE COTE
United States District Judge